THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.2387 OF 2006

Dated: 10-02-2006

Between

Shaik Shamsuddin, S/o. Mastan Saheb

Occ: Business, R/o. Markapur Town and Mandal,

Prakasam District.

...PETITIONER

AND

The Commissioner, Markapur Municipality,

Markapur, Prakasam District and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondents in taking steps to demolish the existing house bearing

D. No. 1-60(1) & 1-60(2), 1st Ward, R & B Main Road, Markapur, Prakasam District without following due process of law and without initiating proceedings under the Land Acquisition Act (for short 'the Act') as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner constructed a building in the aforementioned door numbers after obtaining permission from the municipal Commissioner vide

B.A.No.14/96 dated 13.05.1996. He further submits that for the purpose of widening the R&B Main road of Markapur municipality the second respondent earmarked the structures belonging to the petitioner and the respondents are proposing to demolish the same without

following due procedure prescribed in law. He further submits that even under the Municipalities Act without acquiring the lands of the private citizens, portion of any property cannot be taken away for the purpose of road widening, either by way of private negotiations or by way of initiating proceedings under the Act. He further submits that the petitioner has not encroached any road and he has constructed the building or structures as per the approved plan only.

I am not inclined to express any opinion as to whether the land in question belongs to the petitioner or the municipality. If any portion of the property of the petitioner is coming in the way of road widening the respondents straightaway cannot dispossess the petitioner or demolish the existing structures without following due process of law.

Having regard to the facts and circumstances of the case,
the writ petition is disposed of directing the respondents not to dispossess the petitioner or demolish the structures belonging to the petitioner without following the due procedure prescribed in law.

_____

V. ESWARAIAH, J

February 10, 2006

DSK